

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 39 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

=====

1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

-----  
MANIBEN RANCHHOD

Versus

CHANDULAL DAMODAR  
-----

Appearance:

MR MC SHAH for Petitioners

MR ND NANAVATI for Respondent No. 1  
-----

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 01/09/2000

ORAL JUDGEMENT

1. This is a revision u/s 29[2] of the Bombay Rent

Act at the instance of the original defendants - tenants who were sued by the respondent - plaintiff - landlord for a decree of eviction under the provisions of the Bombay Rent Act.

2. The landlord - plaintiff had claimed possession on the ground that the defendant - tenant was in arrears of rent of more than six months, and also on the ground that he had made permanent construction upon the tenanted premises without the written permission of the landlord.

3. The trial Court raised the appropriate issues based upon the pleadings of the parties and after appreciating the evidentiary material on record, recorded a finding of fact that the plaintiff has failed to prove that he is the owner of the property, or that he is a landlord within the meaning of the Rent Act, and consequently, the defendant is not a tenant of the plaintiff - landlord. In view of this finding, the trial Court also held that the dispute as to whether the defendant had made any permanent construction on the suit property without the consent of the landlord would not survive.

4. The plaintiff - landlord thereupon preferred an appeal u/s 29[1] of the Rent Act.

4.1 The lower appellate Court, after re-appreciating the evidence on record, reversed the finding of the trial Court, and held that the plaintiff had succeeded in proving that he is the owner of the property, and that the defendant is a tenant in respect of the said property. In view of the admitted fact that the defendant had not paid any rent whatsoever to the landlord for more than 11 years and 7 months, the lower appellate Court applied the provision of section 12[3][a] of the Bombay Rent Act, and passed a decree for eviction in favour of the plaintiff - landlord.

5. It is under these circumstances that the tenant has preferred the present revision u/s 29[2] of the Bombay Rent Act.

6. Before proceeding with the merits of the matter, it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising u/s 29[2] of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Ors. v/s Patel Mohanlal Muljibhai [1998(2) GLH 736] = AIR 1988 SC 3325, while approving and reiterating the principles laid down in its earlier decision in the case of Helper

Girdharbhai v/s Saiyad Mohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

7. Only a few salient features require to be noted.

7.1 The principal defence of the defendant - tenant appears to be that he is not the tenant of the plaintiff - landlord inasmuch as the plaintiff - landlord is not the owner of the property. It may be mentioned here that the defendant was the former owner of the property, which according to the plaintiff, was sold by the defendant to the plaintiff, and on the plaintiff becoming the owner thereof, he had let out the property to the defendant as his tenant. This defence of the defendant - tenant appears to arise from the defendant's reply to the statutory notice of the landlord [exh.46 dated 17th March 1981] read with the defendant's written statement at exh.9.

8. Apart from the other supporting and ancillary evidence led by the plaintiff to establish his title to the property, and to establish that he had let out the property to the defendant - tenant, the principal documentary evidence relied upon by the plaintiff consists of a registered sale deed in his favour at exh.85 dated 21st June 1969, supported by the rent note exh.86 executed by the defendant - tenant in favour of the plaintiff - landlord. The lower appellate court has given cogent and convincing reasons, and has discussed the supporting evidence in extensive detail, to come to a conclusion that the plaintiff - landlord has established, that firstly he is the owner of the property, and secondly that he had let out the property to the defendant - tenant. I shall merely refer to only some of the relevant evidence upon which the lower appellate Court has relied upon to come to the aforesaid conclusions. The plaintiff has examined himself at exh. 41, and consequently proved the sale deed dated 21st June 1969 in his favour at exh. 85. It may be noted here that the sale deed is exhibited not merely because it has been proved by the plaintiff as the purchaser, but is

also proved by a number of other witnesses discussed hereinafter.

8.1 The plaintiff's witness Ravishanker Kalidas Mehta, at exh. 55 establishes that he was the scribe who wrote out the sale deed. Other witnesses of the plaintiff - Jadavji Harjeevan at exh. 56 and Bhupatrai Ratilal at exh. 57 have deposed in their capacity as attesting witnesses to the execution of the sale deed. The plaintiff has also examined Hargovind Kalidas at exh. 58, who has identified the thumb impression of the defendant - tenant. Another witness of the plaintiff Jaysukhlal Popatlal Purohit at exh.68 identified the defendant - tenant before the Sub Registrar. Furthermore, the plaintiff has also examined Babulal Ratilal Daftari at exh.75, who was at the relevant point of time the Sub Registrar at Visavadar.

8.2 In view of this overwhelming evidence to establish the actual execution of the sale deed in favour of the plaintiff - landlord, the lower appellate Court was eminently justified in coming to the conclusion that the plaintiff - landlord has established his purchase of the property in question, and consequently, established that he is a landlord in respect of the said premises.

9. The question which next arises as to how the defendant became a tenant in respect of this premises owned by the plaintiff. In this context, the rent note at exh. 86 has been proved on record, which establishes that, on the execution of the sale deed by the defendant in favour of the plaintiff, and on execution of the rent note exh. 86 by the defendant in favour of the plaintiff, the defendant also became a tenant of the plaintiff.

9.1 It is also pertinent to note that, although the defendant had sought to raise considerable controversy as to execution of the sale deed, once it is proved that the sale deed established title in favour of the plaintiff, the defendant has made no comparable attempts to dispute the rent note executed by him in favour of the plaintiff - landlord.

9.2 It is also pertinent to note that consequent to the plaintiff acquiring title to the property in question, relevant mutation entries were also made in the revenue records in favour of the plaintiff. The trial Court, as rightly observed by the lower appellate Court, has casually brushed aside the relevance and evidentiary value of such mutation entries by merely observing that

the plaintiff had failed to prove that the mutation entries were a consequence of the procedural formalities required by section 135-D of the Land Revenue Code. What the trial Court did not appreciate or even realize is that the mutation entries are and can only be effected after following the due procedure, and that once the entries are shown to exist in the official records, it must be presumed that the requisite statutory procedure has been followed. It is not for the trial Court to doubt the procedural validity of the proceedings which led to the passing of the mutation entries, particularly when the defendant himself had not taken any action for about 12 years to challenge those entries.

10. To summarize therefore, this Court has no hesitation in concluding and also observing that it was in fact the judgement of the trial Court which was a perversity in law, and the lower appellate Court rightly set aside the findings thereon, and rightly reversed the decree passed by the trial Court.

11. In the result, the judgement and decree passed by the lower appellate court is eminently sustainable and is required to be upheld. It is so directed. Consequently, there is no substance in the present revision, and the same is accordingly dismissed. Rule is discharged with no orders as to costs. Interim relief stands vacated.

12. At this stage, learned counsel for the petitioner seeks time to vacate the premises. In this context, he states that six months time would be reasonable, and that learned counsel for the opponent has no objection to the same. Accordingly, time to vacate the suit premises is granted to the petitioner - tenant upto 1st March 2001, subject to all the major petitioners filing an undertaking in this court on usual terms, latest by 29th September 2000. It is clarified that there shall be no extension of time for the purpose of filing the undertaking.

\*\*\*\*\*

parmar\*